

Wage and Hour Division, Labor

§ 780.301

with fertilizers, herbicides, and pesticides as indicated by testing to see if such applications are necessary;

(4) Pruning or shearing yearly;

(5) Harvesting of the tree for seasonal ornamental use, typically within 7 to 10 years of planting.

(c) Trees to be used as Christmas trees which are gathered in the wild, such as from forests or uncultivated land and not produced through the application of agricultural or horticultural techniques are not agricultural or horticultural commodities for purposes of sec. 3(f).

[73 FR 77239, Dec. 18, 2008. Redesignated at 74 FR 26015, May 29, 2009]

EFFECTIVE DATE NOTE: At 74 FR 26015, May 29, 2009, § 780.205 was redesignated as § 780.216 and newly designated § 780.216 was suspended, effective June 29, 2009.

§ 780.217 Forestry activities.

Operations in a forest tree nursery such as seeding new beds and growing and transplanting forest seedlings are not farming operations. For such operations to fall within sec. 3(f), they must qualify under the second part of the definition dealing with incidental practices. *See* § 780.201.

[73 FR 77239, Dec. 18, 2008. Redesignated at 74 FR 26015, May 29, 2009]

EFFECTIVE DATE NOTE: At 74 FR 26015, May 29, 2009, § 780.208 was redesignated as § 780.217 and newly designated § 780.217 was suspended, effective June 29, 2009.

Subpart D—Employment in Agriculture That Is Exempted From the Minimum Wage and Overtime Pay Requirements Under Section 13(a)(6)

STATUTORY PROVISIONS

§ 780.300 Statutory exemptions in section 13(a)(6).

Section 13(a)(6) of the Act exempts from the minimum wage requirements of section 6 and from the overtime pay requirements of section 7:

Any employee employed in agriculture: (A) If such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, (B) if such employee is the parent, spouse, child,

or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment, (ii) commutes daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than 13 weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age 16 are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock.

§ 780.301 Other pertinent statutory provisions.

(a) Man-day is defined by section 3(u) of the Act as follows:

“Man-day” means any day during which an employee performs any agriculture labor for not less than 1 hour.

(b) Under section 3(e) of the Act the term employee does not include certain individuals in determining mandays of labor. Section 3(e) provides that:

“Employee” includes any individual employed by an employer, except that such term shall not, for the purposes of section 3(u) include:

(1) Any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family, or

(2) Any individual who is employed by an employer engaged in agriculture if such individual (A) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment, and (B) commutes daily from his permanent residence to the farm on which he is so employed, and (C) has been employed in agriculture less than 13 weeks during the preceding calendar year.

(c) The legislative history of the 1966 amendments to the Fair Labor Standards Act indicates that the Congress in enacting minimum wage protection